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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

PEBBLE LIMITED PARTNERSHIP,

Plaintiff,

vs.

ENVIRONMENTAL PROTECTION  
AGENCY, *et al.*,

Defendants.

**DECLARATION OF ROGER W.  
YOERGES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
EXPEDITED CONSIDERATION OF  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

**CIVIL ACTION NO.  
3:14-cv-00171 HRH**

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1. My name is Roger W. Yoerges. I am a partner with the law firm of Steptoe & Johnson LLP in Washington, DC. I represent Pebble Limited Partnership, Plaintiff in this case. Plaintiff alleges that Defendants (the Environmental Protection Agency and its current Administrator) violated the Federal Advisory Committee Act, 5 U.S.C. App. II § 1 *et seq.* (“FACA”), in the development and execution of EPA’s plan to prohibit or severely restrict mining in the Bristol Bay Watershed pursuant to Section 404(c) of the federal Clean Water Act.

2. On September 15, 2014, Plaintiff filed a Motion for Preliminary Injunction, seeking to prevent Defendants during the pendency of Plaintiff’s FACA case from either (i) taking any further action in connection with its ongoing proceeding under Section 404(c), or (ii) using (or relying in any way on) the Bristol Bay Watershed Assessment in that proceeding.

3. In July 2014, EPA published a Notice of Proposed Determination pursuant to Section 404(c) that proposes to:

restrict the use of certain waters in the Bristol Bay watershed for disposal of dredged or fill material associated with mining the Pebble deposit, a large ore body in southwest Alaska. . . . This proposed determination relies on clear EPA authorities under the Clean Water Act (CWA), and is based on peer-reviewed scientific and technical information. Its scope is geographically narrow and it does not affect other deposits or mine claim holders outside of those affiliated with the Pebble deposit.

*Notice of Proposed Determination under 404(c)*, Fed. Reg. 42315 (July 21, 2014).

4. Under certain courts’ reading of FACA, Plaintiff’s ability to obtain a remedy for EPA’s FACA violations may be lost once the Agency has issued a final Section 404(c) determination. *See* Pl.’s Mot. for Prelim. Injun. at 18-19.

5. Based on the procedural history of its Section 404(c) action in this case, EPA has consistently evidenced its intent to move swiftly toward its final determination, which could be made any time after the comment period closes on September 19, 2014. A final determination

under Section 404(c) to prohibit or severely restrict mining of the Pebble Deposit may eliminate Plaintiff's right to a remedy under FACA and may force Plaintiff out of business. *See* Pl.'s Mot. for Prelim. Injun. at 20-22.

6. Most recently, EPA denied Plaintiff's request for a reasonable extension of time to respond to the Agency's Notice of Proposed Determination, showing once again that it seeks to proceed to a final determination swiftly and without providing the parties most interested in this matter a reasonable opportunity to comment.

7. On Friday, September 12, 2014, I attempted to contact by electronic mail Kent Hanson and Mark Nitzczynski, counsel for Defendants in a related case before this Court, notifying them that Plaintiff intended to file a motion for a preliminary injunction on Monday, September 15, 2014, and offering to refrain from filing the motion if Defendants would agree to refrain from taking any further action in EPA's pending Section 404(c) proceeding. As of 2:00 p.m. on Monday, September 15, 2014, I have not received a response from Messrs. Hanson or Nitzczynski (I had misspelled Mr. Nitzczynski's surname in my September 12 email, but forwarded it to him on the morning of September 15).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 15, 2014 at Washington, DC.

/s/ Roger W. Yoerges

Roger W. Yoerges